

A bankruptcy notice must be in the prescribed form, with such variations as circumstances may require (see Rule 92 of the Bankruptcy Rules), requiring the debtor to pay the judgment sum ordered to be paid in accordance with the terms of the judgment or order. This is exactly what the creditor did. His bankruptcy notice follows exactly the terms of the judgment: see section 3(1)(i) of the Bankruptcy Act (Cap. 18). In my view a Bankruptcy Notice which follows precisely the terms of a judgment, as in this case, is valid even though the interest is not claimed as a fixed sum therein so long as it is capable of being calculated or ascertained by some formula or other means. The applicant complains that she did not know what sum to pay under the judgment. The short answer is that she would have found out if she had written to the creditor for the exact amount payable under the judgment. The authorities cited by counsel for the applicant do not assist him in this matter as they concern bankruptcy notices where the amount required to be paid was in excess of the amount of the final judgment. In the present case, the real complaint is not that the Bankruptcy Notice required payment of an amount in excess of the final judgment but that the final judgment was for an unascertained sum which was also in excess of the amount owing by the applicant in that the final judgment carried interest on the judgment amount in excess of the statutory rate of interest.

I am of the view that there is also no substance in the complaint that the Bankruptcy Notice does not state the exact amount payable by the applicant. What counsel meant by "exactness" was not that the amount of interest could not be calculated at all but that because the judgment amount carried interest at what he alleged was in excess of the statutory rate, the Bankruptcy Notice required payment of an amount which would not have been the same as the judgment amount if it had carried interest at the statutory rate. This is entirely speculative as no evidence was produced to show that the rate of interest on the judgment debt was in excess of the statutory rate of 8% per annum.

Even if it is true, the applicant is not entitled to rely on this ground for the purpose of setting aside a bankruptcy notice as the court cannot at this stage go behind the judgment and inquire into the validity of the debt, as it can in a petition: see *Re Easton*,⁽²⁾ *Re a Debtor (30 of 1956)*.⁽³⁾ Accordingly, until the judgment is set aside, the Bankruptcy Notice in this case conforms to the terms of the judgment and remains valid.

A The applicant's counsel is in fact attempting to pre-empt indirectly the issue which has been raised directly in Summons in Chambers 9071/85 in Originating Summons No. 659 of 1985 which is fixed for hearing on January 5, 1987.

B It would however appear from *Re Foster*⁽⁴⁾ that a bankruptcy court has the discretion to order the hearing of an application of this nature to be adjourned *sine die*, with liberty to apply, until the hearing of the application to set aside the judgment. In that case, the Court of Appeal held, however, that the filing of a statement of claim by itself was not a justification for interfering with the operation of the bankruptcy notice as a statement of claim was not evidence that the debtor had reasonable grounds for bringing the action to set aside the judgment in view of the pending application to set aside. I do not wish to go into the question as to whether the applicant has reasonable grounds to set aside the judgment in view of the pending application to set it aside. Moreover as the applicant is not barred from resisting any bankruptcy petition on the default judgment, I do not think that any purpose will be served by adjourning this application to await the hearing of the application to set aside the judgment. Accordingly I dismiss this application with costs.

Application dismissed.

F Solicitors: *Low & Yap; Tang & Tan.*

G **ALGEMENE BANK NEDERLAND N. V. v. DR. TAN CHIN TIONG & ANOR.**

[O.C.J. (Chan Sek Keong J.C.) December 30, 1986]

[Singapore — Originating Summons No. 989 of 1986]

H *Conveyancing — Sale and purchase of property — Objection to title — Discrepancy in Indenture — Whether good title could be deduced despite this — Property Tax Act (Cap. 144), s. 35(1)(b).*

I The plaintiffs in this case, as owners, granted an option dated December 23, 1985, to the defendants to purchase the property for \$750,000.00. This was subject to the Singapore Law Society's Condition of Sale 1981, Condition 4 of which stated:

"A good title shall be deduced. The Purchasers shall not investigate or make any objection in respect of any title deeds lawfully not in the possession or custody of the Vendor."

The defendants exercised the option on January 6, 1986. The defendants sought to use his Central Provident Fund ("CPF") account to partially finance the purchase but was unable to obtain clearance from the CPF Board. The solicitors for the CPF were not satisfied that the plaintiffs had a good title to the property. The defendants were not able to complete the purchase and were obliged to make the same objection against title to the plaintiffs.

Counsel for the defendants submitted that there was a vital discrepancy between Recital 4 of and the solicitor's certificate to the Indenture and that this raised a doubt on the validity of the sale of the property by the Comptroller and consequently on his right to confer or pass title to any purchaser.

Recital 4 stated that the property was sold by public auction on May 9, 1969, whereas the certificate of the solicitor for Badawie Bakrie, the purchaser, stated that the property was purchased under an option given by the Comptroller of Property Tax to Goldfield Realty (Pte.) Ltd. The defendants contended that the discrepancy must be rectified before a good title could be deduced on the ground that under section 35(1)(b) of the Property Tax Act, the Comptroller had no power to sell by private treaty.

Held, allowing the application: (1) the facts as disclosed in the affidavits prove beyond doubt that the Comptroller sold the property on May 7, 1969, by public auction to Goldfield which then sold the property to Badawie Bakrie. The Indenture was executed by the Comptroller in favour of Badawie Bakrie as the ultimate purchaser on the authority of the Letter of Authority from Goldfield. Accordingly, the sale by the Comptroller on May 7, 1969, was validly made and in compliance with section 35(1)(b) of the Property Tax Act;

(2) a conveyancer need only be concerned with the assurances registered in the Registry of Deeds and not with registrable assurances which are not registered and missing title deeds so registered may always be inspected in the Registry of Deeds to connect the claim of title;

(3) a mere possibility that a claimant to an incumbrance, not bound by the decisions of the court in proceedings to which he was not a party, which involve the purchase in future litigation will not, in an appropriate case such as the present, deter the court from determining that the title is good against the purchase on a view of the facts before it;

(4) in the present case, there was no reasonable doubt that the defendants would not be at risk of a successful assertion against him of any incumbrance or claim against him arising from the non-production of the prior title deeds;

(5) section 38(1) of the Property Tax Act has the effect of vesting in the purchaser a good title not merely passing whatever title or interest of the owner in the property sold.

Cases referred to:

- (1) *Southby v. Hutt* 40 E.R. 619.
- (2) *Oliver v. Hinton* [1899] 2 Ch. 264, 274.

(3) *M.E.P.C. Ltd. v. Christian Edwards* [1981] A.C. 205.

(4) *Re Tan Keng Tin* [1932] M.L.J. 134.

(5) *"The Tremont"* (1841) 1 W. Rob. 163; 166 E.R. 534.

ORIGINATING SUMMONS.

G. Pannirselvam (Ms Chua Bee Lan with him) for the plaintiffs.

Chan Kok Chye for the defendants.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application by the plaintiffs for a declaration (a) that they have a good title to the property known as No. 52 Kingsmead Road, Singapore and (b) that a good title to the said property has been shown in accordance with the contract for the sale and purchase of the said property. After hearing counsel for the plaintiffs and for the defendants, I made an order in terms of the plaintiffs' application on November 26, 1986, when I said that I would give my grounds of decision in due course.

The plaintiffs, as owners, granted an option ("the option") dated December 23, 1985, to the defendants to purchase the property at the price of \$750,000 subject to the Singapore Law Society's Condition of Sale 1981 and satisfactory requisitions and other special conditions which are not relevant to these proceedings except Condition 4 which provided that:

"A good title shall be deduced. The Purchasers shall not investigate or make any objection in respect of any title deeds lawfully not in the possession or custody of the Vendor."

The defendants exercised the option on January 6, 1986. It was the intention of the 1st defendant to use his savings in his Central Provident Fund ("CPF") account to partially finance the purchase of this property and to borrow the balance from the plaintiffs. The plaintiffs are prepared to provide the partial loan but the defendants were unable to obtain clearance from the CPF Board on his CPF funds because, so I am informed, the solicitors for the CPF were not satisfied that the plaintiffs had a good title to the property. Hence the defendants were not able to complete the purchase and were, in effect, obliged to make the same objection against title to the plaintiffs.

The affidavits filed by the plaintiffs and the defendants in these proceedings disclose the

following facts which are not denied by either party.

(a) the good root of title to the property commences from a Conveyance (registered in the Registry of Deeds in Volume 794 No. 151) dated January 31, 1931, and made between S.P.P. Chettiar s/o S. Chettiar as vendor and P.R.N.S.S. Chettiar as purchaser.

(b) P.R.N.S.S. Chettiar died intestate on July 21, 1939, and Letters of Administration were granted to Ramasamy Chettiar and Sethambaram Chettiar s/o P.R.N.S.S. Chettiar as the duly constituted attorneys of Alamelu Achi in Probate No. 238 of 1939 (registered in the Registry of Deeds in Volume 951 No. 48).

(c) the Comptroller of Property Tax ("the Comptroller") in exercise of his powers under section 35(1)(b) of the Property Tax Act published a notice of sale in the *Government Gazette* on December 20, 1968, in *The Straits Times* and *Sin Chew Jit Poh* on April 14, 1969.

(d) the tax remained unpaid and on or about April 11, 1969, the Comptroller instructed Kiong Chai Woon & Company to sell the property by auction; the auction took place on May 7, 1969, and the property was sold to one Goh Ang Ngong as agent (for an undisclosed principal who was subsequently revealed as Goldfield Realty (Private) Ltd) ("Goldfield"). The relevant conditions of sale by auction provided as follows:

"5. The vendor is selling the property as the Comptroller of Property Tax, by virtue of the powers vested in him under Section 35(1)(b) of the Property Tax Ordinance No. 72 of 1960.

6. The vendor shall not be required to prove title to the property and no requisitions on title shall be made."

(e) on December 3, 1969, the solicitors for Goldfield informed the Comptroller that their client had sold the property to Chong Fu (Singapore) Pte. Ltd. and on December 11, 1969, sent a Letter of Authority dated December 11, 1969, from Goldfield authorising the Comptroller to convey the property to Chong Fu (Singapore) Pte. Ltd.

(f) this sale must have been rescinded as on August 17, 1970 the solicitors for Goldfield sent another Letter of Authority to the Comptroller authorising him to convey the property to one Badawie Bakrie.

(g) the property was finally conveyed by the Comptroller to the said Badawie Bakrie by an Indenture ("the Indenture") on March 28, 1978 (registered in the Registry of Deeds in Vol. 2107 No. 160).

(h) By an Indenture dated September 3, 1980 (registered in the Registry of Deeds in Vol. 2180 No. 111), Badawie Bakrie as vendor conveyed the property to the plaintiffs as purchasers.

The issue as to whether the plaintiffs have a good title to the property arose by reason of the contents of the Indenture. Counsel for the defendants submitted that there was a vital discrepancy between Recital 4 of and the solicitor's certificate to the Indenture and that this raises a doubt on the validity of the sale of the property by the Comptroller and consequently on his right to confer or pass any title to the purchaser. Recital 4 states that the property was sold by public auction on May 7, 1969 whereas the certificate of the solicitor for Badawie Bakrie, the purchaser, states that the property was purchased under an option given by the Comptroller of Property Tax to Goldfield Realty (Pte) Ltd. It was submitted that the discrepancy must be rectified before a good title could be deduced on the ground that under section 35(1)(b) of the Property Tax Act, the Comptroller has no power to sell by private treaty.

The answer of counsel for the plaintiffs to this is firstly, the defendants are barred from investigating the title deeds not in the possession of the plaintiffs under condition 4 of the Option; secondly, the defendants are also barred from disputing the root of title of the plaintiffs because he is barred from disputing the validity of the sale by the Comptroller under section 35(5) of the Property Tax Act; and thirdly, although there was a discrepancy in the Indenture, the facts adduced by affidavit prove conclusively that the Comptroller complied with section 35(1)(b) in which he caused the property to be sold on May 7, 1969.

I do not accept the first argument. Condition 4 provides for a good title to be deduced. The second part of the condition is not sufficiently expressed to cut short the root of title to less than 30 years. If the plaintiffs intended to reduce the statutory power of 30 years, they could have done so explicitly. If there were a doubt, the *contra proferentem* rule would apply against the plaintiffs.

I also do not accept the second argument of

counsel for the plaintiffs. Section 35(5) which provides as follows:

"Where premises are sold pursuant to paragraph (b) of subsection (1), the Comptroller shall have power to execute the conveyance and the purchaser of the premises shall not be concerned to inquire whether the provisions of this Act relating to the sale and the conveyance have been complied with nor otherwise to inquire into the regularity or validity of the sale and conveyance."

was enacted by the Property Tax (Amendment) Act 1973 and came into force on August 17, 1973, long after the property was sold. The fact that the Indenture was executed after this amendment has no relevance to the validity of the sale made before such execution.

I agree with the third argument of counsel for the plaintiffs. The facts as disclosed in the affidavits prove beyond doubt that the Comptroller sold the property on May 7, 1969 by public auction to Goldfield which then sold the property to Badawie Bakrie. The Indenture was executed by the Comptroller in favour of Badawie Bakrie as the ultimate purchaser on the authority of the Letter of Authority from Goldfield. Accordingly, the sale by the Comptroller on May 7, 1969 was validly made and in compliance with section 35(1)(b) of the Property Tax Act.

Counsel for the defendants nevertheless submitted that the plaintiffs must deliver to the defendants a statutory declaration or a deed of rectification from the Comptroller that the property was sold by the Comptroller by public auction as any solicitor who acts in any subsequent dealing in respect of the property will be equally perplexed by the discrepancy and would raise the same objection as has been raised in these proceedings. In my view, this demand is unfounded for reasons which are given later. In any case, the discrepancy arose because of the error in the certificate given by the solicitor for the purchaser (under LTR & ROD Practice Circular 1A/73). The Comptroller was not responsible for this error. If anybody has to correct this error by means of a statutory declaration, it should be that solicitor.

It was further submitted by counsel for the defendants that the defendants were entitled to the production of the title deeds prior to the said Indenture *i.e.* the Conveyance dated January 31, 1931 and the Grant of Letters of Administration in Probate No. 238 of 1939, for the purpose of establishing a good root of title of not less than 30 years. Counsel for the defendants referred me to

A certain passages in *Emmet* on Title 17th ed. and *Southby v. Hutt*⁽¹⁾ in support of this contention. In respect of unregistered land, a vendor in England is under an obligation to verify the title shown on the abstract of title by producing the title deeds themselves, or if any of them were not in his possession, by other satisfactory evidence; if he intends to deprive the purchaser of the right to the production of any evidence necessary to verify the title beyond what the title deeds in his own custody will supply, he is bound to make that intention previously known to the purchaser in clear and explicit terms: *Southby v. Hutt (supra)*. In Singapore, the normal practice is for the vendor's solicitor to send title deeds or copies thereof (whether certified or otherwise) to the purchaser's solicitor for inspection. At the same time, the purchaser's solicitor has or should have caused a proper search to be made in the Registry of Deeds of dealings or events affecting the property or the owners thereof going back for at least 30 years. If the deeds received by the purchaser's solicitors do not show a chain of title going back at least 30 years, then the missing deeds can be identified from the search and the registered copies inspected at the Registry of Deeds to determine whether the missing deeds affect the title of the vendor. Whatever may be the legal position in England, the position in Singapore is that a registered assurance in respect of unregistered land which is missing should not be an obstacle to a purchaser deducing a good title unless the missing assurance happens to be the last conveyance in favour of the vendor. In that situation, the vendor will have to satisfy the purchaser that he has not dealt with the deed in a manner which has created claims against the property *e.g.* an equitable mortgage by deposit thereof. But this circumstance affects the ability of the vendor to convey the property free from encumbrances rather than to his title.

The Registration of Deeds Act and the Conveyancing and Law of Property Act, both of which were passed in 1886, created profound changes in and at the same time simplified the practice of conveyancing in Singapore. To take one example relevant to the issue before me, section 4 of the Registration of Deeds Act requires all assurances to be registered in the Registry of Deeds and until and unless so registered, shall not be admissible in any court of law as evidence of title to such land. The effect of this is that firstly, a conveyancer need only be concerned with the assurances registered in the Registry of Deeds and not with registrable assurances which are not registered and that secondly, missing title deeds so registered may

always be inspected in the Registry of Deeds to connect the claim of title.

A further example of such change is that section 15 of the Registration of Deeds Act confers priority according to the date of registration of registrable instruments creating interests in land and not their date of creation except in cases of fraud and that actual and constructive notice of an unregistrable instrument is not fraud. Although section 15 does not protect a purchaser against prior interests, of which he has actual or constructive notice, which were created or came into existence in some way other than by an assurance *e.g.* an equitable mortgagee by deposit of title deeds; a tenant of less than 3 years, the title of an adverse possessor or even a licensee claiming under the doctrine of proprietary estoppel, all these unregistrable interests, save one, are not discoverable by an inspection of the title deeds and therefore have no relevance to deducing title from title deeds but by an inspection of the property itself. The only claim that can be discovered by the non-production of title deeds is when they have been deposited with someone as security or when someone has a lien on the title deeds. Even so, such claims are valid only if deeds in the possession of the claimant include the deed evidencing the title of the owner concerned. Prior deeds which are merely links in the chain of title are not deeds evidencing the title of the owner to the property.

With this background, I now deal with the contention of counsel for the defendants that if the plaintiffs do not produce title deeds going back at least 30 years or give a satisfactory explanation for their non-production, the defendants will be fixed with constructive notice of whatever rights the possession of such title deeds would have, as for example, an equitable mortgagee by deposit of title deeds. Counsel referred to *Oliver v. Hinton*⁽²⁾ Lindley M.R. said:

"To deprive a purchaser for value without notice of a prior incumbrance of the protection of the legal estate it is not, in my opinion, essential that he should have been guilty of fraud; it is sufficient that he has been guilty of such gross negligence as would render it unjust to deprive the prior incumbrancer of his priority."

In my view, this contention has no substance in the circumstances of the present case. First, the defendants have gone further than making inquiries to the plaintiffs about the missing deeds; they have refused to complete unless the prior deeds are produced or a statutory declaration is given for their non-production. Secondly, the missing deeds con-

cerned are the conveyance to P.R.N.S.S. in 1931 and the grant of letters of administration to his estate in 1939. No subsequent assurance relating to the property has been registered in the Registry of Deeds until 1978 when the Indenture was registered. The plaintiffs through their solicitors have informed the defendants that they did not have those title deeds. It is reasonable to infer from the circumstances in which the property was sold in 1969 that the Comptroller himself did not have nor did he deliver the said title deeds to Badawie Bakrie in 1978 and that therefore the latter also did not deliver the said deeds to the plaintiffs upon the sale of the property in 1980. In these circumstances, no court would hold the defendants negligent, much less grossly negligent or fraudulent, in completing the purchase without production of the prior title deeds. Thirdly, even if the said title deeds were held by someone claiming a lien or a mortgage over them, his claim would have been time-barred a long time ago. This is not a case where the plaintiffs are unable to produce the Indenture in their favour. In *M.E.P.C. Ltd v. Christian Edwards*,⁽³⁾ the House of Lords held that the principle that it is the duty of the court, unless in very exceptional circumstances, to decide the rights between the vendor and purchaser of land, even though a third person not a party to the action will not be bound by the decision, applies not only to a question of law but also when a question of a sufficiently good title has been shown depends on a conclusion or inference as to fact. So that a mere possibility that a claimant to an incumbrance, not bound by the decision of the court in proceedings to which he was not a party, which involve the purchaser in future litigation will not, in an appropriate case, deter the court from determining that the title is good against the purchaser on a view of the facts before it. I hold that this is such an appropriate case. The facts and circumstances of this case are so compelling that I have no reasonable doubt that the defendants would be at risk of a successful assertion against him of any incumbrance or claim against him arising from the non-production of these prior title deeds.

The next issue that was raised was whether the plaintiffs, having agreed to sell the property on the condition that a good title shall be deduced, was under an obligation to prove a good title for the statutory period of 30 years under section 3(4) of the Conveyancing and Law of Property Act ("the CLPA"). Counsel for the plaintiffs submitted that it was unnecessary to do so because section 38(1) of the Property Tax Act enabled the Comptroller to vest a good title in the defendants. He also referred to the marginal note which reads:

"Title conferred by purchase at sale under section 35(1)(b)" A

in support of his contention and drew my attention to *Re Tan Keng Tin*⁽⁴⁾ where Terrell J. said that the marginal notes to the Ordinances of the Straits Settlements are part of the Ordinances and may be referred to for assistance in interpretation. Counsel further contended that the Comptroller in exercising his statutory power of sale is analogous to the court exercising its power of sale of a ship under its admiralty jurisdiction where the law is settled that the purchaser of the ship derives his title from the court's order: see "*The Tremont*."⁽⁵⁾ It was argued that as the Comptroller would not have possession of the title deeds, to require him to do so for the purpose of deducing a good title would be to frustrate the very object of his power of sale and that as the expression "owner" in the Act is defined to include persons who may not be the legal or beneficial owners, the Comptroller could not be expected to show a good root of title to a purchaser when selling the properties upon the failure of such "owners" to pay property tax.

Counsel for the defendants submitted that section 38(1) does not abrogate the obligation of the Comptroller as a vendor to show a good root of title under the general law. An argument was also put that section 38(1) was intended to give effect to a sale by the Comptroller as a first chargee by virtue of section 6(3) of the said Act and that in law a chargee, in selling the property charged, could only vest in the purchaser whatever title or interest the chargor might have in the property.

In my view, the analogy of the court's power of sale of a ship under its admiralty jurisdiction to the Comptroller's statutory power is not apt. The former is derived from the general principles of maritime law as part of the common law of England whilst the latter is derived from statute. The effect of the exercise of that statutory power depends entirely on the scope of section 38(1). It is a question of statutory interpretation.

I will now deal with the scope of section 38(1) of the Property Tax Act which reads as follows:

"(1) The purchaser at a sale held under paragraph (b) of subsection (1) of section 35 shall be deemed to have acquired the right or property offered for sale free from all encumbrances created over it and from all subordinate interests derived from it except such as are expressly reserved by the Comptroller at the time of sale.

(2) The Comptroller shall notify in the Gazette the result of the sale and the conveyance to the purchaser of the right or property offered for sale."

In my view, section 38(1), properly construed, has the effect of vesting in the purchaser a good title not merely of passing whatever title or interest of the owner in the property sold for the following reasons.

B First, it is a deeming provision. A purchaser "shall be deemed to have acquired the right or property offered for sale"; if it were intended that this section should only pass the title or interest of the owner to the purchaser, it would have been unnecessary for the legislature to use a deeming formula to achieve this; the Comptroller is already a first chargee by virtue of section 6(3) of the said Act and a sale by a chargee would have that effect under the general law.

D Secondly, the purchaser is deemed to acquire the right or property offered for sale and not the right or property of the owner. The right or property offered for sale is the right or property in the land and not necessarily (but in most cases would be) the right or property of the owner (as defined) in the land. What is acquired is the right or property, (*i.e.* in the land) without reference to the legal title of the owner because it is the land and not the owner that is subject to tax. Property tax is a tax on property; it is not a tax on the owner of the property. It is unlike income tax which is a tax on a person with reference to his income or estate duty which is a tax on a deceased person's estate with reference to his assets passing on death. Income tax and estate duty cannot be levied on what is not the income of the taxpayer or the estate (save for assets deemed to pass on death) of the deceased. Arrears of property tax do not constitute a debt recoverable from the owner, unlike income tax and estate duty. F Property tax, when unpaid, is recoverable by a seizure and sale of moveable property on the land or by the sale of the land itself. It follows that even if the owner (as recorded in the Register of Deeds) does not have a good title, that itself is of no consequence to the Comptroller as a good title must reside in someone else. This interpretation is consistent with and is given effect to by the statutory scheme whereby to facilitate the collection of property tax, notices are sent to owners as defined in the Act who may not necessarily be the true owners. G The terms of this section may be contrasted with section 63(2) of the Land Titles Act which provides that upon the registration of a transfer in the prescribed form by a mortgagee made in exercise of his power of sale, "the interest of the mortgagor . . . as described therein shall pass to and vest in the transferee . . ."

Thirdly, the marginal note reflects the intention of section 38(1). It is to be noted that section 38(1) provides that the property acquired by the purchaser shall be free from all encumbrances created over it. A potential problem of priority may arise if the property is subject to another first charge created by statute (e.g. the Estate Duty Act) but I do not have to deal with this problem now.

For the above reasons, I made an order in terms of the plaintiffs' application.

Application allowed.

Solicitors: *Drew & Napier; Choo Chan & Partners.*

THYAGARAJAN v. PUBLIC PROSECUTOR

[A. Cr. J. (Chua J.) January 22, 1987]

[Singapore — Magistrate's Appeal No. 187 of 1986]

Immigration — Foreigner overstayed in Singapore — "Employment" of foreigner as barber — "Harbouring" of the foreigner — Whether these charges proved — Immigration Act (Cap. 81), ss. 15(1), 56(1)(d), (e) & 56(1)(ii).

Labour Law — Employment of foreigner as barber — Whether charge proved.

The accused in this case was charged with two offences. The first offence was for employing one Venkatachalam Perumal, who had overstayed in Singapore, as a barber in his shop, an offence under section 56(1)(e) of the Immigration Act (Cap. 81) and punishable under section 56(1)(ii) of the said Act. The second offence was for harbouring the said Venkatachalam Perumal in his shop, an offence under section 56(1)(d) of the said Act and punishable under section 56(1)(ii) of the same Act.

The accused was acquitted on the "employment" charge but was convicted on the "harbouring" charge. He appealed. The main argument of counsel for the appellant was that the trial judge was wrong to infer that Perumal was able to sleep in the appellant's barber shop with the appellant's knowledge and further that the trial judge was wrong in invoking the presumption.

Held, allowing the appeal: (1) for the presumption in section 56(6) to arise the prosecution must prove that the appellant had permitted Perumal to sleep in the barber shop;

(2) there was no evidence that Perumal was permitted by the appellant to stay in the barber shop at night;

A (3) the trial judge should not have invoked the presumption nor should he have inferred that Perumal was able to sleep in the barber shop on occasions with the appellant's knowledge because Perumal on those occasions had the keys to the barber shop.

MAGISTRATE'S APPEAL.

B

S. Rajagopal for the appellant.

Ho Meng Hee (Deputy Public Prosecutor) for the Public Prosecutor.

Cur. Adv. Vult.

C

Chua J.: This is an appeal by the appellant Thyagarajan s/o Ramachandran Pandithar against his conviction on a charge that —

D

"you, from the middle of 1985 to 30th January '86 at a barber shop in Pulau Tekong Army Camp, Singapore did harbour one VENKATACHALAM PERUMAL (M/51) being a holder of Social Visit Pass and who has acted in contravention of section 15(1) of the Immigration Act (Cap. 81) by remaining in Singapore after the expiry of the Visit Pass, and you have thereby committed an offence under section 56(1)(d) and punishable under section 56(1)(ii) of the said Act as amended" (the "harbouring charge").

E

The appellant was originally also charged with the offence that —

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"you, from the middle of 1985 to 30th January '86 at a barber shop in Pulau Tekong Army Camp, Singapore did employ one VENKATACHALAM PERUMAL (M/51) as a barber being a person who had overstayed on his Visit Pass in contravention of section 15(1) of the Immigration Act (Cap. 81) and you have thereby committed an offence under section 56(1)(e) punishable under section 56(1)(ii) of the said Act as amended" —

G

of which he was acquitted and discharged (the "employment charge").

H

The prosecution case in respect of both the "harbouring" and "employment" charges rested mainly on the evidence of two material witnesses — Mr. Wong Kong Wa and the subject of the charges, Venkatachalam Perumal (Perumal).

I

Mr. Wong is a Senior Immigration Officer. He said that on January 30, 1986, at about 12.30 p.m. he led a party of Immigration Officers to two barber shops in the Army Camp at Pulau Tekong. At the barber shop in Camp No. 1, he saw Perumal seated in a barber shop. Perumal was alone. Panaiappan Thevarasoo, one of the Immigration Officers, requested for a hair-cut. As Perumal was about to oblige the officers identified themselves and detained him.